

BEFORE THE
PHYSICAL THERAPY BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the First Amended
Accusation Against:

DAVID C. BECKNER
8780 Gemstone Court
Elk Grove, California 95624

Physical Therapist License No. PT25289

Respondent.

Case No. 1D-2003-63635

OAH No. N2005100200

PROPOSED DECISION

Administrative Law Judge Stephen J. Smith, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California on January 4, 2006.

Mara Faust, Deputy Attorney General, represented the Physical Therapy Board of the State of California.

David C. Beckner appeared on his own behalf.

The parties entered into the stipulation detailed below and the matter was submitted on January 4, 2006.

FACTUAL FINDINGS

1. Steven K. Hartzell, Executive Officer, Physical Therapy Board (Board) of the State of California, made the charges and allegations contained in the Accusation and First Amended Accusation in his official capacity on July 29, 2005 and December 9, 2005, respectively. The Board has jurisdiction to revoke, suspend or otherwise impose probationary conditions upon any license to practice physical therapy in the State of California.¹ David C. Beckner timely filed a Notice of Defense to the Accusation that was deemed effective to respond to the First Amended Accusation when it was filed. The matter

¹ Business and Professions Code section 2660.

was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings.

3. Mr. Beckner and the Deputy Attorney General, on behalf of the Board, entered into a stipulation at the outset of the evidentiary hearing. The parties agreed that the factual allegations contained in the First Amended Accusation were true and correct; that legal cause set forth in the First Cause for Discipline was accurate; that the Second Cause for Discipline would be dismissed in light of the stipulation, and that an agreed disciplinary Order of a Public Reprimand would be entered. Mr. Beckner entered into the stipulation on the record knowingly, intelligently and voluntarily, with knowledge that by entering into the stipulation, he would be foregoing his right to an evidentiary hearing on the First Amended Accusation. The Deputy Attorney General joined in the waivers.

4. The Board issued Mr. Beckner Physical Therapist license number PT 25289 on June 29, 2000. The license is current and was due to expire on August 31, 2005, unless renewed. There is no history of disciplinary action by the Board against Mr. Beckner.

5. Mr. Beckner was convicted in absentia upon his plea of nolo contendere in the Superior Court, County of Sacramento, State of California, on November 4, 2003, of a misdemeanor violation of Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol. Mr. Beckner was sentenced to serve three years informal probation, the terms of which included two days in the County jail, with credit for two days time served, to pay fines totaling \$1260, his driver's license was restricted for 90 days, and to attend a first offender's drinking driver's program.

6. The facts and circumstances leading to the conviction occurred on September 10, 2003, in the early evening hours in Sacramento, California. Mr. Beckner was driving himself home after a day of boating on the Sacramento River. He was pulled over for erratic driving on the freeway by a California Highway Patrol (CHP) motorcycle officer. Mr. Beckner drifted out of his lane and took a freeway interchange curve at an excessive rate of speed. When stopped, the CHP officer noted Mr. Beckner had a strong odor of alcohol about his person, but he told the officer that he had had only one beer and "felt fine." Mr. Beckner was arrested and had a breath test, which revealed his blood alcohol to be .17 per cent by volume, or a bit more than twice the legal limit. Mr. Beckner has paid his fines and completed all requirements of his probation except the expiration of the probationary period.

7. Mr. Beckner's conduct leading to his conviction was substantially related to the qualifications, functions and duties of a licensed physical therapist. Driving a vehicle on a freeway with more than twice the legal limit of alcohol in one's bloodstream reflects poorly upon Mr. Beckner's judgment.

8. The Deputy Attorney General expressed satisfaction that there is sufficient evidence of rehabilitation in the possession of the Board such that the continuation of Mr. Beckner's license, subject to the imposition of the disciplinary Order below, adequately

protects the public interest in having its licensed physical therapists be persons of good judgment and character.

LEGAL CONCLUSIONS

1. “As in ordinary civil actions, the party asserting the affirmative in an administrative hearing has the burden of proof going forward and the burden of persuasion by a preponderance of the evidence.”² The Department bears the burden to prove by a clear and convincing evidence that the allegations contained in the First Amended Accusation are true, and that the relief the Department seeks should be granted. The parties stipulated that the Factual Findings set forth above meet the required standard of proof for the imposition of the disciplinary Order.

2. Business and Professions Code section 2660 provides that the Board may suspend for a period of up to 12 months, revoke or impose probationary conditions upon any license to practice physical therapy in the State of California for:

[§]...[§]

(d) Conviction of a crime which substantially relates to the qualifications, functions and duties of a physical therapist or physical therapist assistant. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

[§]...[§]

(i) Conviction of or a violation of any of the provisions of this chapter or of the State Medical Practices Act.

[§]...[§]

3. Business and Professions Code section 2239, a provision of the State Medical Practices Act, provides that a license may be revoked, suspended or probationary conditions attached upon:

[§]...[§]

(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed a conviction within the meaning of this section. The Division of Medical Quality may order discipline of the licensee in accordance with Section 2227 or the Division of Licensing may order denial of the license

² *McCoy v. Board of Retirement* (1986) 183 Cal. App. 3d 1044, 1051.

when the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information or indictment.

[¶]...[¶]

4. Mr. Beckner stipulated that he was convicted of a misdemeanor offense that is substantially related to the qualifications, functions and duties of a physical therapist licensee. Legal cause exists for the imposition of discipline upon his license.

5. Business and Professions Code section 495 provides that the Board may publicly reprove a physical therapist or physical therapist assistant for a violation of the Physical Therapy Act. The issuance of a public reproof is appropriate when:

- a. The offense is an isolated incident;
- b. Sufficient time has elapsed from the time of the offense without further violations that would indicate a recurrence is unlikely;
- c. The respondent has admitted to the offense;
- d. The respondent has expressed remorse;
- e. There has not been prior discipline for a similar violation;
- f. In case of an offense related to substance abuse, active participation in a recovery program has been documented for at least one year without a relapse.

6. The parties stipulated that the criteria above are satisfied in this matter, and that a public reproof is a mutually satisfactory outcome.

ORDER

Physical Therapist license Number PT25289, issued by the Physical Therapy Board of California to David C. Beckner is PUBLICLY REPROVED.

DATED: January 31, 2006

Original Signed By:
STEPHEN J. SMITH
Administrative Law Judge
Office of Administrative Hearings

**BEFORE THE
PHYSICAL THERAPY BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of Accusation)	Case #: 1D 2003 63635
Filed Against:)	
)	OAH No.: N2005100200
DAVID C. BECKNER)	
)	
)	
)	
)	

The foregoing Proposed Decision, in case number 1D 2003 63635 , is hereby adopted by the Physical Therapy Board, Department of Consumer Affairs, State of California.

This decision shall become effective on the 10 day of April, 2005.

It is so ordered this March 9, 2006 .

Original Signed By:
Donald A. Chu, P.T., President
Physical Therapy Board
of California